

DOCKET SECTION

BEFORE THE POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Complaint of Joseph B. Hurwitz and
Steven G. Kimbell et al.,
COMPLAINANTS

Docket No. C99-3

**MOTION FOR RECONSIDERATION OF ORDER NO. 1254 DISMISSING
COMPLAINT (JUNE 15, 1999)**

Come now Complainants, Joseph B. Hurwitz and Steven G. Kimbell, pro se, to file this Motion for Reconsideration, noting that the Federal Rules of Civil Procedure in similar circumstances provide a basis to amend an earlier judgment ((Fed. R. Civ. P. Rule 59(e)): "...to correct a clear error of law or prevent manifest injustice." Pacific Ins. Co. v American Nat'l Fire Ins. Co., 148 F.3d 396, 403(4th Cir. 1998)).

ARGUMENT

I. In its Order to Dismiss (Order), the Postal Rate Commission (the Commission) states that "Even granting that all facts alleged by Complainants are true, the circumstances of this case do not reach a level of arbitrary discrimination that violates postal policy as provided for in Title 39."

However, Complainants can and have made a showing (in District Court -- DKC8:98-CV-2293 pleading of 9/21/98, pp. 4 and 5) that the ZIP CODE BOUNDARY REVIEW PROCESS (Survey Guidelines) is capriciously applied by the Postal Service (USPS), offered to spokespersons for community groups only when it suits USPS, citing the case of Elkridge, Maryland, which to this day has no knowledge of the illicit memorandum, the Survey Guidelines. Elkridge succeeded

in obtaining the Zip code changes it sought only by mounting an arduous campaign, significantly aided by their Congressman (see Exhibit 1). USPS regulations not applied generally to the people are by definition arbitrary and discriminatory. Regulations that have not been implemented properly also are not legal; if they are nonetheless applied to the people, they are an imposed tyranny.

II. Moreover, whenever the Survey Guidelines are invoked, prompting a USPS "survey" of a community and, as a consequence of a positive showing of same, a last line of address is changed in any manner, businesses large and small bear a substantial dollar burden of business-material revision costs; whereas, the people in the affected area are only "inconvenienced" by said changes -- again, demonstrating a capricious and arbitrary discrimination among users of the mail which violates postal policy as provided for in Title 39.

III. The Commission fails to apprehend the application process of the Survey Guidelines: They are not but one factor in the decision to adjust a Zip code boundary. They are the ONLY factor. USPS entertains external requests for changes -- at its pleasure -- and if it determines it may profit by said changes pays for a survey, telling postal customers in the affected area that changes will be made as requested if the survey results are positive by simple majority count. USPS NEVER USES THE SURVEY PROCESS TO EFFECT CHANGES IT NEEDS TO EFFECT MAIL DELIVERY. CHANGES SOUGHT ARE SUPERNUMARY ONLY (CHANGES BEYOND THOSE THAT POSITIVELY AFFECT MAIL DELIVERY EFFICIENCIES). THESE ARE SOLELY CHANGES FOR "POSTAL IDENTITY." USPS effects mail-efficiency changes all by itself.

IV. The Commission states (Order at 10), "Use of the Survey Guidelines, even if they are somewhat flawed...." Since the Survey Guidelines have never been promulgated as legal regulations USPS has no business using them at all, flawed or unflawed. Until and unless USPS can make a showing that it alone among federal agencies may freely enact regulations without going through the Commission or publishing same in the Federal Register, the Commission must strongly recommend -- publically -- that USPS abide by Title 5 statutes which govern rulemaking.

V. The Commission appears to find for Complainants by 1) acknowledging that it has subject-matter jurisdiction concerning complaints over operational matters if there is a showing that an operational policy is arbitrarily discriminatory on its face or is implemented in an arbitrarily discriminatory manner; by 2) granting that the relief sought by Complainants (consideration of their Complaint by the Commission and recommendations sent to the Board of Governors, who would consider the matter and issue orders if warranted) lies within the authority of the Commission. Yet, the Commission grants USPS' Motion to Dismiss, because (id. at 10) "...even if the Commission were to accept as true all the facts alleged by the Complaint, the Postal Service would not have failed to provide service consistent with Title 39 policies."

Complainants cite 18 U.S.C.A. sec. 1001:

...it is a crime to submit false, fictitious, or fraudulent statements, or representations, with respect to a matter within the jurisdiction of any federal ... agency....

A. The non-governmental defendants cited in the Complaint furnished false information to USPS.

Complainants cite "Hurwitz (no relation) v. State, 92 A.2d 575, 200 Md.578."

A conspiracy to do an unlawful act or to do a lawful act for an illegal, fraudulent, malicious or corrupt purpose or for a purpose which has a tendency to prejudice the public in general is at common law an indictable offense, though nothing is done in execution of conspiracy, and no matter by what means the conspiracy was intended to be effected.

Complainants cite "Bolden v. State, 410 A.2d 1085, 44 Md. App.643."

"Chain conspiracy" is characterized by different activities carried on with same subject of conspiracy in such a manner that each conspirator in chain-like manner performs a separate function which serves in the accomplishment of the overall conspiracy.

B. USPS through its illegal Survey Guidelines provides the means by which unscrupulous and uncaring spokespersons for a community group can summon forth upon unexamined request a survey of any community in the country, which may, if USPS finds it cost effective to do so, result in a costly last line of address change.

Where in Title 39 are swindles and conspiracies consistent with services provided by the Postal Service? In the instant Complaint false information is provided USPS to effect changes that benefit requester and USPS but harm everybody else in the affected area.

C. Complainants must also state that District Court found against their claim of fraud against the non-governmental defendants, in part because of a clear error citing Maryland law pertaining to actionable fraud, in pertinent part (reciting the five elements of actionable fraud): "(1) the defendant made a false representation to the plaintiff..." Whereas, Maryland law actually states, as in "Butcher v. Robertshaw Controls Co., 550 F. Supp. 692: ((1)) that a representation made by a party was false..."

It simply is not necessary, according to Maryland law, to defraud a party to his face. The other four elements are recited in the Complaint. It is worth noting, too, that in situations like those cited in the Complaint, injured parties could cite USPS for misrepresenting the Survey Guidelines as bona fide regulations, meeting the fourth element of actionable fraud by pointing to the forced acceptance of the Survey ballot (a positive response to which effects the changes requested and forces damages).

The Commission cannot hold that lawless behavior does not "... reach a level of arbitrary discrimination that violates postal policy as provided for in Title 39."

VI. Furthermore, the Commission appears to find for Complainants by stating (*id.* at 10):

The Commission is concerned that the problems cited by Complainants indicate that there is substantial room for improvement in the Boundary Review Process. The Postal Service should reexamine this process and implement methods which may ensure more fully the inclusion of all interested parties. Certainly, the Service is able to contact all postal patrons in an affected area with a saturation mailing.

A. Such a recommendation should be presented in a public report (Order at 9), since it relates to issues not related to rates or classifications, upon which the Postal Service may act in its discretion.

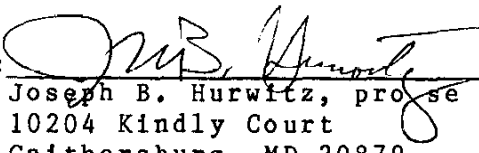
B. Such a recommendation is also morally repugnant and legally nonsensical: It proposes that USPS more fairly implement its illegal regulations, i.e., more gently rape the people.

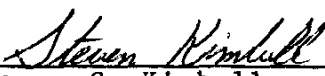
VII. Complainants emphasize that the changes complained about are only those that are occasioned when USPS has clearly stated that it has had no intention of changing the last line of address

including Zip code of an affected area before the request for change was received from a requester pursuant to the Survey Guidelines. In the instant Complaint, Frederick Price, manager of the Postal Service's Operations Support Program in the D.C. area, stated, in the Gaithersburg Gazette, Wednesday, February 11, 1998, "This is not a postal service driven change; it came from the community. Our national policy is that a ZIP is established by the results of the survey."

For all of the foregoing reasons, Complainants Joseph B. Hurwitz and Steven G. Kimbell, pro se, request that this Honorable Commission grant this Motion for Reconsideration because the Complaint, in fact, presents issues appropriate for Commission action under 39 U.S.C. sec. 3662, as implemented by Commission regulations.

Respectfully submitted,

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A.1. FROM: 9/21/98 DIST. COURT (CV ACTION NO. DKC8:98-CV-2293)
PENDING, "OPPOSITION TO KETTER BROS. INC MOTION TO STRIKE
AFFIDAVITS IN SUPPORT OF PLAINTIFFS' PURPORTED MEMORANDUM
FOR SUMMARY JUDGMENT."

they need to, since "the general stability of boundaries is essential to prompt and accurate distribution of mail." (ZIP CODE BOUNDARY REVIEW PROCESS APRIL 1994, p. 1.)

A. The truth is that the USPS will offer to a requesting community or municipality the fraudulent regulations set forth in the "Boundary Review," above only when potential changes due to the application of same won't significantly cost them -- the ideal paradigm of application being mere keystroke changes to the Zip code database. If a town in one county borders a town of another county (in a well-developed area) and one Zip code encompasses both towns, despite evident demographic differences as reflected in property values, school performance, etc., and the richer town wishes to distinguish itself from the poorer by obtaining its own Zip code and boundary, but the logistic costs to USPS are too high to make the change (reassignment of 20 new postal routes, personnel, vehicle allocation, etc.), that town is unlikely to ever hear of the existence of the ZIP CODE BOUNDARY REVIEW PROCESS APRIL 1994, but rather will have to slug it out on its own, enlist its Congressman, circulate petitions, justify by furnishing its own statistical proofs of population growth to the USPS, and by applying unrelenting pressure on USPS officials to effect the desired change:

B. Plaintiffs cite the case of the town of Elkridge, MD, which in July, 1997, finally obtained its own Zip code via a process described above and was never offered the "Boundary Review," as a means to effect the changes sought, because the USPS knew that a survey it might conduct would certainly favor change, and "the

A.1. & A.2.: RE: CAPRICIOUS APPLICATION
OF "SURVEY GUIDELINES" BY USPS.

A.2.
change (would) be implemented if the majority of survey respondents support(ed) it." (ZIP CODE BOUNDARY REVIEW..., p. 4.) Such a change represented unacceptable costs to USPS and, therefore, it strenuously resisted the City of Elkridge's efforts for change.

C. Plaintiff Joseph B. Hurwitz affirms on personal knowledge that the foregoing is true, as is the following:

1. The affected town is Elkridge, MD, formerly Zip code 21227, a number and boundary shared with the Baltimore County city of Halethorpe, MD; its new Zip code is 21075, placing the Zip boundary within the county boundary of Howard County, in which Elkridge lies.

2. The Greater Elkridge Community Assoc., 5825 Main St., Elkridge, MD 21075, after ten (10) tries finally won the changes, according to spokesperson Cordelia Hanson (410.796.0690) who led the effort. These results were accomplished over many years of dedicated and persistent work. Corroborating evidence is given by a) Steve Albright, General Manager, Commercial Tire Co., Inc., 5790 Washington Blve., Elkridge, MD 21075 (410.796.4330); and b) Steve Kopchinski and Wade Adams, Sales Representatives with Standard Supplies, 5820 Washington Blvd., Elkridge, MD 21075 (410.379.6000).

3. The foregoing attests to the fact that USPS does not "appreciate the identity and addressing concerns of local communities," as stated in the ZIP CODE BOUNDARY REVIEW PROCESS APRIL 1994. Rather, it seeks only those changes to a last line of address including Zip code which cost them little but benefit them greatly, even at the expense of those communities which in fact do not welcome such changes, such as in the instant case and complaint concerning the Montgomery Village development area.

CERTIFICATE OF SERVICE

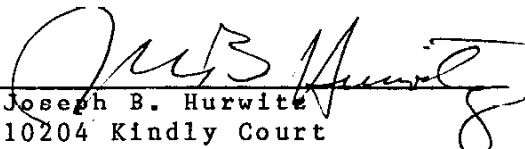
I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day, June 24, 1999, served the foregoing document upon:

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